

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GEORGE SEPULVEDA,
Petitioner

v.

RONNIE HOLT,
Respondent

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CIVIL NO. 1:CV-10-1861
(Judge Rambo)
(Magistrate Judge Blewitt)

MEMORANDUM

Before the court is a report of the magistrate judge to whom this matter was referred in which he recommends that the motion filed pursuant to 28 U.S.C. § 2241 by Petitioner, George Sepulveda, be dismissed for failure to exhaust administrative remedies. Sepulveda has filed objections to the report and recommendation to which Respondent has filed a response. The matter is ripe for disposition.

I. Background

Sepulveda alleges in his petition that he was denied due process rights during a disciplinary hearing conducted on June 24, 2010. He alleges further that he did not receive a copy of the Disciplinary Hearing Officer's ("DHO") report in a timely fashion. (*See* Doc. 1, Petition, at pp. 1-4.) Petitioner supplemented the petition to indicate that he received the DHO report on September 7, 2010. He seeks to expunge the incident report and have all his rights and privileges reinstated.

Respondent argues that Sepulveda's petition is premature and should be dismissed for failure to exhaust administrative remedies.

II. Discussion

The DHO held a hearing on the disciplinary charges against Sepulveda on June 24, 2010. On July 15, 2010, the DHO issued his written decision and a copy was sent to Sepulveda the same day. Sepulveda claims he did not receive the decision.

On July 6 and 8, 2010, Sepulveda filed two appeals with the Northeast Regional Office. On July 28, 2010, Sepulveda filed two appeals to the Bureau of Prison's Central Office. (*See* Doc. 13-2, Response to Petition, Ex. 2, Declaration of Wallace, at ¶ 6.) All four appeals were rejected. (*Id.* at ¶ 7.)

The Central Office advised Sepulveda to wait until he received the DHO report before filing his appeal. (*Id.*) It appears from the record that no further appeals were taken since July 28, 2010. (*Id.*)

Attached to a letter from Petitioner to this court received on December 16, 2010 (Doc. 18), is Exhibit A, a memorandum from C. Bonshock, Correctional Counselor at the United States Penitentiary at Canaan, confirming that Sepulveda received a copy of the DHO report on September 7, 2010. That memorandum requested that Sepulveda be given more time from that date to complete his administrative appeal. This memorandum, along with the Central Office's advice to Sepulveda on August 11, 2010, to "wait until you receive your DHO report. You will have 20 days from the receipt to start the appeal process by filing a BP-10," (Doc. 13-2, Response to Petition, Ex. 2, Declaration of Wallace, at ¶ 7), were more than sufficient notice to file an appeal. As noted above, no appeal was taken after receipt of the DHO report.

III. Conclusion

The magistrate judge is correct in finding that Sepulveda failed to exhaust administrative remedies. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: January 4, 2011.

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ORDER

Accordingly, upon review of the record and applicable law, **IT IS**
HEREBY ORDERED THAT:

- 1) The court adopts the report and recommendation of Magistrate Judge Blewitt.
- 2) Sepulveda's petition filed pursuant to 28 U.S.C. § 2241 is dismissed for failure to exhaust administrative remedies.
- 3) The Clerk of Court shall close the file..

s/Sylvia H. Rambo
United States District Judge

Dated: January 4, 2011.